

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

Elgin, Joliet and Eastern Railway Company,  
Petitioner,

Vs.

Gifford 300, LLC, Bluff City, LLC, City of Elgin, AOS, LLC, and  
the Cook County Highway Department,  
Respondents.

T04-0080

Petition of Elgin, Joliet and Eastern Railway Company to  
Authorize the Establishment of a New At Grade Crossing at a  
Point Where a New Industrial Side Track to be Installed to Serve  
a New Facility Currently Under Construction and Located West of  
Gifford Road Will Cross Gifford Road in the City of Elgin, County  
of Cook, State of Illinois.

**ORDER**

By the Commission:

On November 23, 2004, Elgin, Joliet & Eastern Railway Company ("Railroad"), a Delaware corporation, filed the above-captioned verified petition with the Illinois Commerce Commission ("the Commission"), naming as Respondents Gifford 300, LLC ("Gifford"); Bluff City, LLC ("Bluff City"); AOS, LLC ("AOS"); the City of Elgin, Illinois; Cook, Illinois; and the Cook County, Illinois, Highway Department ("CCHD").

Under the Illinois Commercial Transportation Law, Commission authorization is required before an at-grade crossing track may be constructed across a public road, highway, or street. 625 ILCS 5/18c-7401(3). In this petition, the Railroad seeks Commission authorization permitting Respondent AOS to construct a grade crossing on Gifford Road in Elgin, Illinois, at a point where AOS would install a new industrial sidetrack. The sidetrack would connect the mainline of Elgin, Joliet and Eastern Railway Company and a liquid asphalt storage and manufacturing facility AOS is constructing and will operate. Although AOS would own the proposed crossing, Commission regulation requires that the petition seeking the crossing must be either the Railroad, as an interested party, or a public body having jurisdiction over the highway involved. 92 Ill. Adm Code 1535.201.

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, this matter came on for hearing before a duly authorized Administrative Law Judge ("ALJ") of the Commission at its offices in Chicago Illinois on February 2, 2005. Petitioner appeared by counsel and presented the testimony of Thomas Hunter, Engineer-Signals, Communications, and Electrical; Michael Steffen-

Senior manager of Operations; and William Salman-Assistant Manager of Marketing. Further, the following witness testified in support of the Petition: Dean Kelley, Manager of Respondents Bluff City, Gifford, and AOS. Appearances were also filed by Brian Vercruysse-Rail Specialist-Transportation Bureau of the Commission and Christopher Snyder-Chief Engineer for CCHD. No party contested the requests of the Petition. At the conclusion of the hearing on February 2, 2005, the record was marked "Heard and Taken."

### THE PETITION

Petitioner states that the proposed grade crossing would be constructed at Gifford Road on an easement AOS would obtain from CCHD. According to the petition, the new grade crossing would improve public safety by reducing the number of trucks that otherwise would travel to the liquid asphalt facility, once it is in operation.

In addition to the grade crossing, AOS would construct and own the sidetrack leading to the asphalt facility. The proposed side-track would cross Gifford Road in Elgin, Illinois, and extend from the Railroad's main line track, located east of the proposed crossing, to the asphalt facility, on easements AOS would obtain over property owned by Respondents Gifford, LLC and Bluff City, LLC.

Thomas Hunter, of the Railroad, testified that AOS would utilize DOT Rail Services, a private contractor, to construct the proposed grade crossing surface and the industrial sidetrack. AOS would be responsible for all construction and maintenance costs associated with the crossing surface. AOS would be responsible for the cost of "Do Not Stop on Tracks" signs, advance railroad-warning signs, and advance railroad and stop bar pavement markings at the crossing; and the Cook County Highway Department should be responsible for their maintenance. AOS would be responsible for the cost and maintenance of all other warning devices, and has contracted with the Railroad to design and construct all devices required by the Commission at the crossing.

Mr. Hunter testified the Railroad would serve as the primary contact for the proposed grade crossing and would treat the crossing in the same manner as crossings it owns and operates. Although AOS would own the crossing and would be responsible for its maintenance and the maintenance of the crossing warning systems, the Railroad would serve as the rail-crossing operator. As rail crossing operator, the Railroad would be responsible for all state and federal documentation and reporting requirements associated with the new crossing. In addition, the Railroad would serve as the primary contact for any crossing warning system problems or inquiries that might arise.

Dean Kelley testified that AOS, Bluff City, and Gifford support the Railroad's request to construct the proposed grade crossing, because the crossing would serve AOS's new facility.

Permits from the CCHD are required for construction of a new track, crossing surface, warning devices, pavement marking, and signing and should be obtained by AOS prior to beginning construction within the Gifford Road right-of-way.

Mssrs. Kelley and Steffen both testified that rail traffic at the proposed crossing is estimated to be no more than two train movements per day (one into the liquid asphalt facility and one out of the facility); the train movements would occur strictly between the hours of 9:00 p.m. and 5:00 a.m. each day; each train would consist of no more than two locomotives and twenty-four rail cars; and trains would move over the proposed industrial side track at no more than ten miles per hour. Kelley also testified that proposed rail service (estimated at 90 to 180 trains per year) to the new liquid asphalt facility would eliminate an estimated 168 truck movements per day into and out of the facility. The current average daily traffic on Gifford Road at the location of the proposed crossing is approximately 3,715 vehicles per day (total for both north and south bound traffic). Vehicular traffic is estimated to increase by 2,242 vehicles to an average of 5,417 vehicles per day (total for both north and south bound traffic) once the area is fully developed. Access to the new liquid asphalt facility will be via Vulcan Boulevard, which is located south of the new facility, and the proposed grade crossing. An existing gated drive north of the proposed crossing would be removed.

Mr. Steffen testified that a normal train move would take three minutes for a train to cross Gifford Road. With active warning devices (automatic flashing light signals and gates, as distinguished from passive warning devices that consist solely of signs), motorists along Gifford Road would be stopped for approximately four minutes. The design of the new facility and industrial lead track would provide sufficient space to prevent a train from being stopped on the crossing during normal train operations.

Petitioner's witness Hunter testified that the proposed grade crossing would be constructed with a rubber surface and would be located approximately 210.9 feet south of an existing Northeast Illinois Region Commuter Rail Corporation-owned METRA grade crossing on the Milwaukee District/West Line. Warning devices at the proposed grade crossing would consist of crossbuck warning signs, automatic flashing light signals and gates, and bells. The location of the proposed grade crossing was designed by the Railroad and AOS, in consultation with METRA. With the proposed separation between the existing METRA grade crossing and the proposed grade crossing, and train operations occurring from 9:00 pm to 5:00 am, the potential for train-vehicle conflicts at either crossing would be minimized. To further highlight the presence of the new grade crossing, AOS would be responsible for installing and maintaining advance railroad warning signs, "Do Not Stop on the Tracks" signs, and stop bar pavement markings along Gifford Road. In addition, the shoulder areas along Gifford Road would remain level and clear, allowing a vehicle escape area.

### **Commission Analysis and Conclusions**

Section 1536.40 of the Illinois Administrative Code provides in pertinent part that the Commission shall order the construction of a new at-grade crossing if the subject

crossing satisfies all of the following criteria or if the public and convenience and necessity requires the opening:

- There is presently inadequate or no vehicular access to the area to be served by the crossing.
- Alternate vehicular access cannot be provided at a cost equal to or less than the cost of establishing the crossing.
- The crossing would not meet the Commission's criteria for closure of crossings outlined in Section 1536.20 of Title 92 of the Illinois Administrative Code.
- The crossing's average daily traffic would be at least 1,000 vehicles per day within three years after the crossing was established.
- The crossing's location does not interfere with the railroad's operational activities such as switching and usage of a passing track(s) that would result in substantial delay of, or hazard to, motor vehicles.
- The crossing does not pose risks to train crews or motorists beyond those normally associated with at-grade crossings.

Based upon the evidence of record in this proceeding the Commission finds that the proposed at-grade crossing meets the above captioned criteria. Additionally, the Commission concludes that the proposed project is necessary to serve the public and convenience and necessity and should be approved.

In addition to requiring AOS to secure Commission approval to construct this at-grade crossing, the Illinois Commercial Transportation Law authorizes the Commission to require reconstruction, minor alteration or relocation, improvement, or maintenance of the crossing, and to apportion their costs between the affected railroads, here, AOS and the Petitioner Railroad. 625 ILCS 5/18c-7401(3).

The Commission, having reviewed the entire record, finds that:

- (1) Petitioner Elgin, Joliet and Eastern Railway Company is a rail carrier, as defined by the Illinois Commercial Transportation Law;
- (2) Respondent City of Elgin is a municipal corporation in Cook County, Illinois;
- (3) Respondents, Gifford 300, LLC, Bluff City, LLC and AOS, LLC each are Illinois limited liability companies;
- (4) Respondent, Cook County Highway Department exists by virtue of the laws of the State of Illinois;
- (5) the Commission has jurisdiction of the parties and the subject-matter of this proceeding;

- (6) the recitals of fact and conclusions of law contained in the prefatory portion of this order are supported by the record and are hereby adopted as findings of fact and conclusions of law;
- (7) the Elgin, Joliet and Eastern Railway Company's petition to authorize Respondent AOS, LLC to construct a highway-rail at-grade crossing at Gifford Road in Elgin, Illinois, to provide rail service to a new AOS, LLC liquid asphalt facility, using a new AOS, LLC industrial side track originating at the mainline of Elgin, Joliet and Eastern Railway Company, is required by public convenience and necessity; and is consistent with the policy declared in the Illinois Commercial Transportation Law and its implementing regulations, 625 ILCS 5/18c-7401(3); and 92 Ill. Adm. Code 1536.40;
- (8) AOS, LLC will own the at-grade crossing and should be responsible for constructing the new highway rail at-grade crossing at Gifford Road in Elgin, Illinois, to provide rail service to a new AOS, LLC liquid asphalt facility;
- (9) AOS, LLC should be responsible for all costs associated with the construction of the proposed Gifford Road highway-rail at-grade crossing, including installation of a crossing surface and warning devices (crossbuck warning signs, automatic flashing light signals and gates, and bells), signage, and pavement markings;
- (10) AOS, LLC should be responsible for the cost of "Do Not Stop on Tracks" signs, advance railroad warning signs, and advance railroad and stop bar pavement markings at the crossing, and the Cook County Highway Department should be responsible for maintenance of the signs and pavement markings;
- (11) AOS, LLC and the Elgin, Joliet and Eastern Railway Company, should be jointly and severally responsible for repairing, relocating, replacing, and maintaining the proposed Gifford Road grade crossing and all other warning devices not identified in Finding (10), including the crossing surface and automatic warning devices;
- (12) AOS, LLC should promptly close the existing gated driveway into its site after construction of the new Gifford Road highway-rail grade crossing is completed and the crossing is open to vehicular traffic; this driveway is located south of the existing Northeast Illinois Region Commuter Rail Corporation-owned METRA grade crossing, north of the proposed highway-rail grade crossing at Gifford Road and west of Gifford Road; AOS, LLC should install "Do Not Stop on Tracks" signs, advance railroad warning signs and advance railroad and stop bar pavement markings before its gated driveway is closed;

- (13) AOS, LLC should obtain from the Cook County Highway Department prior to construction of the crossing permits for construction of a new track, crossing surface, warning devices, pavement marking, and signing, and a permanent easement; the permits and the easement should be obtained by AOS prior to beginning construction within the Gifford Road right-of-way.
- (14) all parties should maintain the existing roadway shoulders along Gifford Road level and clear in the area adjacent to the new Gifford Road highway-rail grade crossing;
- (15) the Elgin, Joliet and Eastern Railway Company should serve as the rail operator for the crossing, and should be responsible for all state and federal documentation and reporting requirements associated with the new crossing.
- (16) the Elgin, Joliet and Eastern Railway Company should advise AOS, LLC on its crossing warning system maintenance and repair needs, and should serve as the primary contact for any crossing warning system problems or inquiries that might arise.
- (17) all parties should proceed immediately to take the actions identified in these Findings and complete these improvements within twelve months from the date of this order.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Respondent AOS, LLC shall construct a new highway-rail grade crossing on Gifford Road in the city of Elgin, Cook County, Illinois, that complies with Findings (7) through (14) and (17).

IT IS FURTHER ORDERED that Petitioner Elgin, Joliet and Eastern Railway Company shall comply with Findings (11), (14) through (17).

IT IS FURTHER ORDERED that Respondents Gifford 300, LLC and Bluff City, LLC, and Cook County Highway Department shall comply with Findings (14) and (17).

IT IS FURTHER ORDERED that in the event the new Gifford Road highway-rail crossing is no longer utilized, the Elgin, Joliet and Eastern Railway Company shall promptly file a petition with the Commission requesting permission to close the crossing.

IT IS FURTHER ORDERED that in the event the new Gifford Road highway-rail crossing is no longer utilized, and the Commission authorizes closure of the crossing, it shall be the responsibility of AOS, LLC and the Elgin, Joliet and Eastern Railway Company, jointly and severally, to remove the rail, crossing surface, automatic warning devices, signs, pavement markings, and all other items within the Gifford Road right-of-way.

IT IS FURTHER ORDERED that the Elgin, Joliet and Eastern Railway Company shall file Form 3 of Section 1535 of Title 92 of the Illinois Administrative Code showing details of the automatic warning devices required under this order, and shall receive approval by Rail Safety Program Administrator resolution before installing the devices.

IT IS FURTHER ORDERED that the Elgin, Joliet and Eastern Railway Company and AOS, LLC each shall, at six-month intervals from the date of this order, file with the Director of Processing and Information of the Commission's Transportation Bureau (Director or Processing) written reports describing the progress they have made toward completion of the work required of them under this order. Each progress report shall include the docket number and date of this order; the project completion date deadline established by this order; crossing information (inventory number and railroad milepost), type of improvement, and the name, title, mailing address, phone number, facsimile number, and electronic mailing address of employee responsible for management of the project.

IT IS FURTHER ORDERED that the Elgin, Joliet and Eastern Railway Company and AOS, LLC shall jointly file with the Transportation Bureau's Director of Processing within five days after completing the work required of each of them under this order, a United States Department of Transportation Inventory Form (#6180.71) as notice of the completion.

IT IS FURTHER ORDERED that any person requesting an extension of time of up to thirty days to complete this project shall file a request with the Commission's Director of Processing and Rail Safety Program Administrator no later than fourteen days before the ordered deadline.

IT IS FURTHER ORDERED that any person requesting an extension of time exceeding thirty days shall file a petition for a supplemental order with the Commission's Director of Processing and the Rail Safety Program Administrator no later than twenty-one days before the ordered deadline.

IT IS FURTHER ORDERED that requests for extensions of time and petitions for supplemental orders shall include the reasons the additional time is needed to complete the work and the time within which the project will be completed.

IT IS FURTHER ORDERED that the Commission or its Administrative Law Judge shall deny petitions for supplemental orders and requests for extensions of time, if the reasons for the request are insufficient or where it appears the person has not made a good-faith effort to complete the project within the ordered time. Failure of the Commission or the Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that this is a final order, in accordance with the Illinois Commercial Transportation Law, Chapter 625 of Illinois Compiled Statutes,

Sections 18c-2201 and 18c-2206; and the Administrative Review Law, Chapter 735 of Illinois Compiled Statutes, Section 5/3/101 et seq.

By order of the Commission this 12<sup>th</sup> day of April 2005.

*Edward C. Husley*<sub>2</sub>

Chairman

JUDGE	BC
SECTION CHIEF	
ORDERS SUPERVISOR	raw